

From: "Mike Mazur" <mmazur@3phasesRenewables.com>
To: "Jason Orta" <Jorta@energy.state.ca.us>
Date: 5/17/2007 6:25 PM
Subject: RE: 2004 Procurement from Sierra Pacific Burney-RPS VerificationReport

Jason:

After talking to you, PG&E, SPPI, I believe there is an acceptable solution without breaking the bank.

If we utilize Station RECs, and replace some of them from Burney to another SPPI facility, there will be sufficient amount for 2004 and 2005 to make the difference between us and PG&E that CEC is referring to in the Report.

Please call for more information.

Thanks,

Michael Mazur, PE, MBA

Principal

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From: Jason Orta [mailto:Jorta@energy.state.ca.us]
Sent: Friday, May 11, 2007 10:59 AM
To: mmazur@3phases.com; DCL3@pge.com; JSP5@pge.com; BElery@spiind.com
Cc: BWM@cpuc.ca.gov; psd@cpuc.ca.gov; Susannah Churchill; SVN@cpuc.ca.gov; Gabe Herrera; Heather Raitt; Mark Hutchison; Tony Goncalves
Subject: 2004 Procurement from Sierra Pacific BurneyRPS VerificationReport

I am following up on the issue that was raised in the staff draft RPS Verification Report, which was released in March 2007, regarding the sale of generation and renewable attributes by the Sierra Pacific Burney biomass facility to 3Phases Energy Services and PG&E. In 2004, Sierra Pacific Burney (Burney), sold generation to PG&E under an existing QF contract and sold Renewable Energy Credits (RECs) associated with this same generation to 3Phases Energy Services (3Phases). Both PG&E and 3Phases claimed these purchases as procurement in 2004.

Because the sum of the generation sold to PG&E and the RECs sold to 3Phases exceeded the annual generation of the Burney facility in 2004, staff initially recommended that the total annual generation for the Burney facility be apportioned between PG&E and 3Phases based on each party's purchases relative to the facility's total generation. This recommendation was reflected in the Staff Draft RPS Verification Report. PG&E opposed the apportionment of generation, because it did not credit PG&E for all of its procurement from Burney in 2004, and argued that it should be given full credit for its procurement because SB 107 changed the law to limit Burney's ability, as a QF, to issue RECs, and therefore PG&E procured bundled renewable energy. Burney, on the other hand, argues that it had a right to sell the RECs separate from the commodity energy under its QF contract with PG&E, because of a FERC order applicable to older QF contracts.

In light of this contract dispute, the Renewables Committee Final RPS

Verification Report, which will be released May 11, 2007, recommends that neither PG&E nor 3Phases be credited for their Burney procurement until such time as the dispute is resolved. This is reasonable, because the Committee Final RPS Verification Report finds that the Energy Commission has no authority to resolve this contract dispute and therefore can not determine which party, PG&E or Burney, has a right to the RECs. Since only one party has a right to any single REC, it is not appropriate to apportion the RECs associated with Burney's generation between PG&E and 3Phases. Also, the Energy Commission does not know if Burney sold RECs to additional parties. If it did, and Burney is determined to possess the better rights in the RECs, then there would be a lesser amount of RECs potentially available for apportionment to PG&E.

Although SB 107 does limit a QF's ability to issue RECs, it may not do so on a retroactive basis, back to 2004. Under SB 107, Public Utilities Code section 399.16 (a)(5) was enacted to read as follows:

"(5) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15."

Pursuant to Section 399.16 (a)(5), no RECs may be created for any of the power that Burney sells to PG&E if that power is sold to PG&E under a power purchase contract that was entered into prior to January 1, 2005, UNLESS the power purchase contract contains explicit terms and conditions specifying the ownership or disposition of the RECs associated with the power sold to PG&E. If the power purchase contract contains such explicit terms and conditions, then the ownership and disposition of the RECs is dictated by these terms and conditions. If the power purchase contract is silent on the issue of RECs (as is the case, according to PG&E and Burney), then no RECs may be created for the power sold to PG&E, and therefore the presumption is that the renewable attributes for this power are transferred to PG&E along with the kilowatthours of electricity.

Since Section 399.16 was not in effect when these RECs transactions took place, it may not apply unless the law is given a retroactive application. And there is nothing on the face of the law itself that suggests the Legislature intended Section 399.16 (a)(5) to apply retroactively.

The Committee Final RPS Verification Report will be considered for adoption at the California Energy Commission's May 23rd Business Meeting. The Committee Final RPS Verification Report will be available on the Energy Commission's web site at [www.energy.ca.gov/portfolio/notices/index.html] . If you have any questions, please contact me at (916) 6535851 or by email at <<mailto:jorta@energy.state.ca.us>> jorta@energy.state.ca.us.

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